

Uday S. Jagtap

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 1083 OF 2018

1. Popat Shrirang Nikam
Age : 70 years, Occ. Retired
2. Ranjana Popat Nikam
Age : 65 years, Occ. Housewife
Both R/at : Dalmodi, Post Bombale,
Taluka – Khatav, Dist. Satara.]..Appellant

Vs.

Union of India,]
Through General Manager,]
Central Railway, CSTM, Mumbai]..Respondent

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Mr. Vasant N. More for the appellant
Mr. T.J. Pandian for the respondent

CORAM : PRITHVIRAJ K. CHAVAN, J.

**RESERVED ON : 24th MARCH, 2021.
PRONOUNCED ON : 29th APRIL, 2021.**

JUDGMENT : -

1. This appeal takes an exception to the judgment and order dated 29th June, 2018 passed by the Railway Claims Tribunal, Mumbai Bench, Mumbai.

2. Facts germane for disposal of the appeal are as follows :-

3. The appellants are the unfortunate parents of the deceased Mahesh Popat Nikam, aged about 23 years (for short 'deceased'), who died in a train accident while travelling from Pune to CSTM by

12126 Up Pragati Express on 21.01.2012 at the Kalyan Railway Station. The deceased was travelling on the strength of a valid Railway Ticket No. 748442400 Ex. Pune to Kalyan, dated 21.01.2012. The ticket was recovered from his possession at the time of taking his personal search by the police, which has been duly stated in the inquest panchanama. It is the case of the appellants that the incident occurred due to a sudden jerk of the train and push by the crowd in the compartment resulting into fall of the deceased between the railway platform and the train. The body of the deceased was cut into two pieces. It is, therefore, contended that fall of the deceased was accidental, which is an untoward incident as defined in Section 123(c)(2) of the Railways Act, 1989 (for short "Railways Act").

4. A claim application was filed before the Railway Claims Tribunal, Mumbai seeking compensation. The Tribunal after considering the affidavit-in-lieu of evidence of the appellant – Popat Nikam as well as after going through the respondent's evidence in the form of DRM's report, inquest panchanama etc., found that it was not an 'untoward incident' but it was due to the negligence on the part of the deceased, who tried to alight from the running train when it reached at Kalyan Station and in that process he fell down and his body came under the train resulting in a cut into two pieces.

5. The reason assigned by the Tribunal is that Train No. 12126 Up Pragati Express, does not have halt at Kalyan Station. Since the deceased had a ticket upto Kalyan itself, he attempted to get down from a running train and, therefore, the death being a result of his own negligence, is not entitled for any compensation. The Tribunal,

however, held that the deceased was a *bona fide* passenger travelling on the date of incident in Pragati Express from Pune to Kalyan.

6. Aggrieved, the appellants have preferred the present appeal.

7. I heard Mr. More, learned Counsel for the appellants and Mr. Pandian, learned standing Counsel for the respondent.

8. At the outset, Mr. More, learned Counsel for the appellants would argue that the Tribunal had committed a grave error in ignoring the fact that there was not a single eye-witness, who had vouched the alleged attempt on the part of the deceased to alight from the running train at the railway platform at Kalyan. Even, the Station Master has not witnessed the incident. Merely because Pragati Express had no scheduled halt at Kalyan and only because the deceased had valid ticket upto Kalyan, does not *ipso facto* mean that he would attempt to get down from a running train by risking his life. Mr. More has drawn my attention to the brief particulars of ‘untoward incident’ tendered by the Inspector, R.P.F. Kalyan in Form-2 as per Rule 7. Clause (e) of the said particulars reveals that on duty train ticket examiner Shri. George, who seems to be the Chief Ticket Inspector, informed the Deputy Station Superintendent of Kalyan Station that he noticed the incident. It indicates that the passenger fell down at Kalyan Station, Platform No.7. Thus, Mr. More would argue that there is no evidence tendered on record by the respondent so as to show that the act of the deceased amounted to an offence, meaning thereby he died due to his own criminal act. He submits that the respondent had not examined any witness. Mr. More has also laid emphasis on the fact that had it been a criminal act in the

proviso to Section 124A of the Railways Act, an offence ought to have been registered and the FIR and charge-sheet should have been filed by the GRP. Thus, he urged to set aside the impugned judgment and order *inter alia* praying for grant of compensation.

9. Mr. Pandian, learned standing Counsel for the respondent, on the other hand, candidly admits that though no witness has been examined on behalf of the respondent, yet, he supported the impugned judgment by contending that the only inference which can be drawn from the material on record is that deceased must have attempted to alight from a running train at Kalyan since he had a valid ticket only upto Kalyan from Pune. Mr. Pandian submits that perhaps at the time of boarding the train at Pune, the deceased might not have realized that the said train had no scheduled halt at Kalyan Railway Station.

10. Firstly, there is no dispute that the appellants are the parents of the deceased. Secondly, the deceased was travelling on the strength of a valid Railway Ticket bearing No. 748442400 by 12126 Up Pragati Express from Pune to Kalyan on 21.01.2012. The appellant - Popat Nikam, in his affidavit-in-lieu of evidence has stated that the deceased was travelling from Pune to Mumbai by 12126 Pragati Express on 21.01.2012. When the train reached at Kalyan Station, he accidentally fell down from a running train due to push by the crowd inside the compartment, which has resulted into his death. Nothing could be elicited from this witness from the cross-examination on behalf of respondent falsifying the evidence of this witness that the deceased accidentally fell down due to the push by the crowd inside the compartment. Admittedly, he was not an eye-

witness. The inquest panchanama reveals that the deceased had fallen down from the said train at platform no.7 of Kalyan Railway Station and his body was cut into two pieces. The only question is if according to the respondent, the deceased had tried to alight from the running train, which was said to have been noticed by one Mr. George, the Train Ticket Examiner, why he has not been examined to substantiate their contention that it was the own criminal act of the deceased and not an accidental fall. Even otherwise, brief particulars given by the Inspector R.P.F. Kalyan clearly indicates that the passenger fell down at Kalyan Railway Station. Clause 2, column (a), reads as under :-

“2. In case of accidental falling or other untoward incidents :-

(a) Kilometreage at which the passenger fell or person was knocked down :-

Ans :- As per the memo of Dy.S.S. of Kalyan – Passenger fell down at Kalyan Station, Platform No.7. (Handwritten portion).”

11. Had Mr. George been examined by the respondent, even he would have adhered to the report given by the Inspector R.P.F. Kalyan in which case also it could only be an accidental fall. The burden is always upon the respondent to prove that the passenger has died on account of his own criminal act, in which the respondent has miserably failed. By non-examining Mr. George, an adverse inference is required to be drawn against the respondent.

12. It is well settled and has been observed consistently by the Apex Court that Section 124(A) of the Railways Act lays down “strict liability or no fault liability in case of Railway Accident. Where principle of ‘strict liability’ is applicable, the proof of incident is not

required. The Railway has clearly admitted accidental death of the deceased and, therefore, burden is upon it to prove otherwise that the alleged incident is not an 'untoward incident' as per Section 123(c) of the Railways Act. As has been rightly argued by Mr. More, had it been a criminal act, the respondent could have registered an offence, which it did not.

13. The respondent has failed to bring the case within any of the exception of clauses (a) to (e) under Section 124A of the Railways Act.

14. The learned Members of the Tribunal, it seems, have failed to consider the evidence on record in its correct perspective as well as the ratio laid down by the Hon'ble Supreme Court in the case of ***Union of India Vs. Prabhakaran Vijaya Kumar & Ors. 2008 ACJ 1895.*** The salient features of the said judgment area reproduced as under :-

"8. However, the evidence of D. Sajja, DW-1, who was the Station – Master at the railway station corroborates the evidence of PW-2, DW-1 had deposed that he saw one girl running toward the train and trying to enter the train and she fell down. He has further stated that the deceased Abja had attempted to board the train and fell down from the running train. For this reason, the Tribunal held that this was not an 'untoward incident' within the meaning of the expression in Section 123(c) of the Railways Act, 1989, as it was an accidental falling of a passenger from a train carrying passengers.

9. In appeal, Kerala High Court was of the view that the deceased sustained injuries, even according to the respondents, in her anxiety to get into the train which was moving. Hence, the High Court held that the deceased came within the expression 'accident falling of a passenger from a train carrying passengers' which is an 'untoward

incident', as defined in section 123(c) of the Railways Act, 1989.

10. We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an 'accidental falling of passenger from a train carrying passengers'. Hence, it is an 'untoward incident' as defined in Section 123(c) of the Railways Act.

11. No doubt, it is possible that two interpretations can be given to the expression 'accidental falling of a passenger from a train carrying passengers', the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since, the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence, in our opinion, the latter of the above mentioned two interpretations, i.e. the one which advances the object of the statute and serves its purpose should be preferred vide Kunal Singh V. Union of India, (2003) 4 S.C.C. 524 (para 9), B.D. Shetty V. CEAT Ltd., (2002) 1 S.C.C. 193 (para 12), Transport Corporation of India V. E.S.I. Corporation (2000), 1 S.C.C. 332, etc.

12. It is well-settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, the beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide Alembic Chemicals Works Co. Ltd. V. Workmen, A.I.R. 1961 S.C. 647 (para 7), Jeewanlal Ltd. V. Appellate Authority, A.I.R. 1984 S.C. 1842 (para 11), Lalappa Lingappa V. Laxmi Vishbnu Textile Mills Ltd., A.I.R. 1981 S.C. 852 (para 13), S.M. Nilakjar V. Telecom Distt. Manager, (2003) 4 S.C.C. 27 (para 12), etc.

14. In our opinion, if we adopt a restrictive meaning to

the expression ‘accidental falling of a passenger from a train carrying passengers’ in Section 123(c) of the Railways Act. We will be depriving a larger number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by the railway trains since everybody cannot afford travelling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression ‘accidental falling of a passenger from a train carrying passengers’ includes accidents when a bona fide passenger, i.e. a passenger travelling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, purposive, and not literal, interpretation should be given to the expression.”

15. Since the provisions for compensation in Railways Act is a beneficial piece of legislation and, therefore, it should receive a liberal and wider interpretation and not a narrow and technical one. The appellants being dependant of the deceased, should not be deprived of such benefit, which is bestowed by the legislation.

16. For the foregoing reasons, the impugned judgment warrants interference in appeal. Consequently, the appeal will have to be allowed.

17. The impugned judgment and order dated 29th June, 2018 passed by the Railway Claims Tribunal, Mumbai is quashed and set aside. Now, to the order :-

ORDER

- (a) The appeal is allowed.
- (b) The respondent – Railway shall deposit compensation of Rs.8,00,000/- (Rupees Eight Lakhs only) in the Railway Claims Tribunal, Mumbai within a period of eight weeks from today.
- (b) If the respondent fails to deposit the compensation within eight weeks, future interest at the rate of 9% p.a. will be levied on the amount of compensation till the entire amount is realised.
- (c) The Record & Proceedings be remitted to the Railway Claims Tribunal, Mumbai.

(PRITHVIRAJ K. CHAVAN, J.)